

CHAPTER 12 LEASES

A library which determines to acquire a building or parking facility for library purposes by lease or lease purchase must follow the procedures of IC 36-1-10 or IC 36-12-10.

LEASE WITH NO OPTION TO PURCHASE

If a lease does not contain an option to purchase, the provisions of IC 36-1-10-5 shall be followed:

1. The term of the lease may not be longer than ten years; however, a lease may be for a longer term if the lease is approved by the Department of Local Government Finance.
2. The lease must provide that the lease is subject to annual appropriation by the appropriate fiscal body.
3. The leasing agent must have a copy of the lease filed and kept in a place available for public inspection.

A leasing agent may lease part of a structure. [IC 36-1-10-4.1(b); IC 36-1-10-5]

According to Scheub v. Town of Schererville, 617 NE2d 585 (Ind. App. 5 Dist. 1993), "... the legislature intended to make leases without options to purchase subject to all of the procedural requirements of the chapter with the exceptions of sections 6, 12, 16, and 17 ... (FN1.) Section 6 provides that a leasing agent may not enter a lease that will last longer than fifty years. Section 12 governs leases entered into in 'anticipation of acquisition or construction of a structure, system or transportation project.' Section 16 permits a political subdivision owning a structure with respect to which revenue bonds are outstanding to convey the structure to the lessor in fee simple and lease it from the lessor to refinance the outstanding municipal bonds. Finally, Section 17 governs annual appropriations and tax levy."

LEASE WITH OPTION TO PURCHASE

Libraries wishing to lease with option to purchase have a choice of utilizing the provisions of IC 36-1-10, or IC 36-12-10. If the library wishes to use IC 36-1-10, the board should adopt a resolution stating its intent to use that chapter instead of IC 36-12-10.

Requirements to Lease a Structure

A leasing agent may not lease a structure, transportation project, or system unless:

1. The leasing agent receives a petition signed by 50 (fifty) or more taxpayers of the political subdivision; and,
2. The fiscal body determines, after investigation, that the structure transportation project, or system is needed. [IC 36-1-10-7]

Lease Renewal

The lease may provide that the leasing agent has an option to renew the lease for a further term or to purchase the property. The terms and conditions of the purchase must be specified in the lease. [IC 36-1-10-9]

Option to Purchase

Whenever the leasing agent exercises an option to purchase the property, then the political subdivision may issue and sell bonds for the purpose of procuring money to pay the purchase price. If the leasing agent does not exercise an option to purchase, then upon the expiration of the lease and full performance by the leasing agent, the property becomes the absolute property of the political subdivision. The lessor shall convey title to the political subdivision. [IC 36-1-10-9]

Plans and Specifications

A lessor proposing to build, acquire, improve, remodel or expand a structure for lease to a political subdivision shall submit plans, specifications, and estimates to the leasing agent before executing a lease. The leasing agent shall submit the plans and specifications to the Division of Fire and Building Safety or the Building Law Compliance Officer and other agencies designated by law. [IC 36-1-10-10(a)]

A lessor proposing to acquire a transportation project or system may enter into a lease without submitting plans, designs, or specifications to any political subdivision. However, before the execution of the lease, the lessor must submit to the lessees an estimate of the cost and a description of the transportation project or system. [IC 36-1-10-10(b)]

Lessor Must Hold Fee Simple

The lessor must hold in fee simple land on which a structure is to be erected, acquired, improved, remodeled, or expanded. The lessor must hold in fee simple a structure that is to be acquired, improved, remodeled or expanded. [IC 36-1-10-11(a)]

Sale of Land/Structure to Lessor

The leasing agent may sell land or a structure owned by the political subdivision to the lessor if the political subdivision wants to lease a structure proposed to be built, acquired, improved, remodeled, or expanded on that land:

1. The leasing agent shall appoint two (2) appraisers to appraise the fair market value of the land or structure.
2. The appraisers must be professionally engaged in making appraisals or licensed under IC 25-34.1.
3. The appraisers shall return their appraisal to the leasing agent within two (2) weeks after the date of their appointment.
4. The leasing agent shall sell the land or structure for not less than the appraised value. However, if the political subdivision acquired the land or structure during the three (3) years preceding the date of the appointment of the appraisers, the land or structure may not be sold for an amount less than the amount paid by the political subdivision for the land or structure.
5. The leasing agent shall be paid in cash upon the agent's delivery of the deed.
6. The leasing agent is not required to comply with any other law relating to the sale of land or structures by a political subdivision. [IC 36-1-10-11(b)]

Note: A political subdivision owning a structure with respect to which its revenue bonds are outstanding may, to refinance these bonds, convey the structure to the lessor in fee simple and lease it from the lessor, subject to the approval of the Department of Local Government Finance. The minimum purchase price and procedures are located in IC 36-1-10-16. [IC 36-1-10-16]

Notice and Hearing

After the leasing agent and the lessor have agreed upon the terms and conditions of the lease, but before the execution of the lease, the leasing agent shall publish notice of a public hearing to be held before the leasing agent. The notice shall be published one time, at least ten days before the date of the hearing. The notice must state the date, place, and hour of the hearing and provide a summary of the principal terms of the lease. Additionally, the notice must contain the name of the proposed lessor, the location and character of transportation project, or system, to be leased, the rental to be paid, and the number of years the lease is to be in effect. The cost of the publication of the notice shall be paid by the lessor. The proposed lease, drawings, plans, specifications, and estimates for the structure or description of and cost estimate of the transportation project, or system, are open to public inspection during the ten day period and at the hearing.

All persons are entitled to be heard at the hearing as to whether the execution of the lease is necessary and whether rental is fair and reasonable for the proposed structure or system. After the hearing the leasing agent may modify, confirm, or rescind the proposed lease, but the rental as set out in the published notice may not be increased. The leasing agent may rely on the testimony of independent experts as to the fairness and reasonableness of the lease. If the execution of the lease as originally agreed upon or as modified is authorized by the leasing agent, the leasing agent shall give notice of the execution of the lease by publishing it two times, at least one week apart, with the second publication made at least ten days before the signing. [IC 36-1-10-13]

Taxpayer Objections

If lease rentals are payable, in whole or in part, from property taxes, ten or more in the political subdivision who disagree with the execution of a lease may file a petition with the County Auditor within thirty (30) days after publication of the notice of the execution of the lease. The petition must state the taxpayer's objections and the reasons why the lease is unnecessary or unwise. The petition will be forwarded to the Department of Local Government Finance, who will fix a time and place for the hearing of the matter. [IC 36-1-10-14]

Appropriation

A political subdivision that executes a lease under these provisions shall, subject to IC 36-1-10-17(d), make an annual appropriation and tax levy at a rate to provide sufficient money to pay the rental stipulated in the lease. [IC 36-1-10-17(a)]

A political subdivision that executes a lease for a transportation project may only levy a tax under this section for an amount necessary to restore debt service funds and may not levy a tax for lease rental payments. [IC 36-1-10-17(d)]

Tax Exemption

Structures, transportation projects, and systems leased by a lessor contracting with the political subdivision are exempt from all state, county, and other taxes. However, the rental paid to a lessor under the terms of a lease is subject to taxation. [IC 36-1-10-18]

MAJOR PROVISIONS OF IC 36-12-10

The Library Leasing Law provides the authority and procedures for library boards to lease buildings for library purposes. Major provisions of this statute are as follows:

Prerequisites for Lease

Prerequisites for lease approval are:

1. A lease may not be entered into for a period of more than forty (40) years).
2. A petition must be filed with library board signed by fifty (50) or more resident taxpayers of the library district.
3. The library board must make a determination that the building is needed.
4. The library board must make a determination that the library cannot provide the necessary funds to pay the cost or its proportionate share of the cost of the building(s) required to meet present needs. [IC 36-12-10-2]

Library Holding Corporation

A library may enter into a lease under this chapter only with a not-for-profit corporation organized under Indiana law for the sole purpose of acquiring real property; building; improving, constructing, or renovating a suitable library building or buildings, including the necessary equipment and appurtenances; leasing the library facilities to the library; and collecting the rentals and applying the proceeds from the rentals in the manner provided in IC 36-12-10.

The lessor corporation shall act entirely without profit to the corporation, its officers, directors, and members, but is entitled to the return of capital actually invested, which includes: incorporation and organization expenses; financing costs; carrying charges; legal, contractors and architects' fees; and any other capital cost.

The lessor corporation is also entitled to sums sufficient to pay interest on outstanding securities or loans, and the cost of maintaining its corporation existence and keeping its property free of encumbrance.

Upon receipt of any amount of lease rental by the lessor corporation above the amount necessary to meet incidental corporate expenses and to pay interest on corporate securities or loans, the excess funds shall be applied to the redemption and cancellation of its outstanding securities or loans as soon as this may be done. [IC 36-12-10-3]

Contract Requirements

All contracts of lease must provide that:

1. The public corporation or corporations have an option to renew the lease for a further term, with like conditions; or
2. The property covered by the lease may be purchased after six (6) years from the execution of the lease and before the expiration of the term of the lease, on the date or dates in each year that are fixed, at a price equal to the amount required to enable the lessor corporation owning the site to:
 - a. Liquidate by paying all indebtedness, with accrued and unpaid interest; and
 - b. Recover the expenses and charges of liquidation.

However, the purchase price prescribed above may not exceed the capital actually invested in the property by the lessor corporation represented by outstanding securities or indebtedness plus the cost of transferring the property and liquidating the lessor corporation.

A lease may not provide that any library is under any obligations to purchase the leased library facilities, or under any obligation in respect to any creditors, members, or other security holders of the lessor corporation. [IC 36-12-10-4]

1. To pay all taxes and assessments levied against or on account of the leased property;
2. To maintain insurance on the property for the benefit of the lessor corporation; and
3. To assume all responsibilities for repair and alterations with regard to the buildings during the term of the lease. [IC 36-12-10-6]

Notice and Public Hearing

Prior to execution of the contract agreed upon by the lessor (library holding corporation) and the lessee (library board), a public hearing concerning the proposed lease and building plans must be held. Notice of the hearing, containing the day, place and hour of the hearing and a summary of the lease conditions (including location, names of corporations, character of property, rental terms and duration of lease) must be published once, at least ten (10) days prior to the hearing in a newspaper of general circulation in the library district, or if none, in any newspaper of general circulation in the county. The proposed lease, building plans and specifications and estimates must be available for public inspection ten (10) days prior to the hearing. Following the hearing, modifications in the lease may be made upon agreement by the lessor and lessee corporations but in no case may the publicized lease rental be increased. Publication cost is to be paid by the lessor corporation. [IC 36-12-10-8]

Upon the execution of the lease, notice of the contract acceptance must be published by the library board once in a newspaper of general circulation in the library district, or if none, in any newspaper of general circulation in the county.

Taxpayer Objections

Fifty or more taxpayers in the library district who oppose the proposed lease may file a petition with the County Auditor within thirty (30) days of the publication of the execution of the lease. Such petition should set forth the objections to the lease and factual support regarding the objections.

Hearing on Taxpayer Objections

The auditor shall certify the petition and data to the Department of Local Government Finance, who will set a hearing date not less than five (5) nor more than thirty (30) days upon receipt. The hearing shall be held in the library district. Notice of the hearing will be given by the Department of Local Government Finance to the members of the library board and to the first ten (10) taxpayers-petitioners at least five (5) days prior to the hearing. The decision of the Department of Local Government Finance will be final. The proposed lease may be amended upon agreement by the lessor and lessee provided no increase in the publicized rentals is included. [IC 36-12-10-9]

General Obligation Bonds

Should the library board exercise its option to purchase the leased property it may issue general obligation bonds to pay the cost of acquisition. The bonds must be authorized, issued, and sold in accordance with IC 6-1.1-20. [IC 36-12-10-12]

Special Tax Levy

Any library that executes a lease under this chapter shall annually levy a special tax, in addition to other taxes authorized by law, sufficient to produce each year the necessary funds with which to pay the lease rental stipulated to be paid by the library under the lease. This levy shall be reviewed in accordance with IC 6-1.1-17. The first tax levy shall be made at the first annual tax levy period following the date of the execution of the lease. The first annual levy must be sufficient to pay the estimated amount of the first annual lease rental payment to be made under the lease. [IC 36-12-10-13]

COMPUTER HARDWARE AND SOFTWARE - LEASE WITH OPTION TO PURCHASE

The leasing agent may lease with option to purchase computer hardware and software by following the provisions of IC 36-1-10. The procedures required are the same as building, acquiring, improving, remodeling or expanding structures for lease to a political subdivision.

A lessor proposing to acquire computer hardware and/or software may enter into a lease without submitting plans, designs, or specifications to the leasing agent. However, before the execution of the lease, the lessor must submit to the lessee or lessees an estimate of the cost and a description of the system. [IC 36-1-10-10(b)]

JOINT LEASING

If two or more leasing agents propose to enter into a lease jointly, joint meetings of the leasing agents may be held. However, joint leasing must be approved by each leasing agent's fiscal body.

A lease executed by two or more leasing agents as joint lessees must set out the amount of the total rental to be paid by each. A lessee has no right of occupancy or use of the transportation project or system until the total rental is paid as stipulated by the contract. [IC 36-1-10-8]

NOTIFICATION OF DEPARTMENT OF LOCAL GOVERNMENT FINANCE

IC 5-1-18 requires libraries that issue bonds or enter into leases after December 31, 2005, to supply the Department of Local Government Finance (DLGF) with information concerning the bond issue or lease within twenty (20) days after the issuance of the bonds or execution of the lease. The information required must be submitted on a form prescribed by the DLGF.